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96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 96–
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SECURITIES INVESTOR PROTECTION—RIGHT TO FINANCIAL PRIVACY

COMPLETED
ORIGINAL

SEPTEMBER 16, 1980.—Ordered to be printed

Mr. STAGGERS, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany H.R. 7939 which on August 18, 1980, was referred jointly to the Committee on Banking, Finance and Urban Affairs and the Committee on Interstate and Foreign Commerce]

[Including cost estimate of the Congressional Budget Office]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H.R. 7939) to amend the Securities Investor Protection Act to increase the amount of protection available under such Act to customers of brokers and dealers, and to provide for the applicability of the Right to Financial Privacy Act of 1978 to the Securities and Exchange Commission, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

I. SECURITIES INVESTOR PROTECTION ACT AMENDMENTS

BACKGROUND AND NEED FOR INCREASED INSURANCE

In the late 1960's, the brokerage industry suffered substantial financial losses principally as a result of enormous back office problems. The resulting failures of a number of brokerage firms threatened the industry's viability. Accordingly, Congress passed the Securities Investor Protection Act in 1970, which provided for the establishment of the Securities Investor Protection Corporation (SIPC) for the purpose of, among other things, insuring customers' cash and securities in the custody of broker/dealers.

SIPC initially began with a one billion dollar guarantee from the U.S. Treasury and, as a result of industry assessments, has subsequently created a trust fund exceeding $200 million. This fund has become self-sustaining and has provided much needed customer con-

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fidence in dealing with the industry. SIPC was substantially revised in 1978 and the maximum insurance levels on cash and securities were increased to their present levels of $40,000 and $100,000 (including cash), respectively. Because of the substantial size of the SIPC trust fund, inflation, and the well-recognized need to provide for further customer confidence in dealing with individual securities firms, the Committee believes that an increase in insurance levels is appropriate and would be commensurate with the recently increased insurance levels for deposits with federally insured banks. In addition, the increased coverage for securities (including cash) would encourage customers to maintain their securities with broker/dealers, thus promoting the immobilization of stock certificates, which was one of the objectives of the Securities Acts Amendments of 1975.

II. Right to Financial Privacy Act Amendments

PURPOSE OF THE LEGISLATION

When Congress enacted the Right to Financial Privacy Act of 1978, it included a 2-year exemption for the Securities and Exchange Commission (the "Commission") from the provisions of that Act to allow time to study how best to reconcile privacy interests of bank customers with the special and continuing need of the Commission for adequate access to the account records of such customers. The Committee believes that this legislation provides a workable reconciliation of those interests and needs. In short, it preserves basic principles underlying the Right to Financial Privacy Act by providing bank customers notice and an opportunity to bring suit against the Commission with respect to its access to those records, but does so in a way which does not unduly impair the legitimate investigatory functions of the Commission.

SUMMARY OF THE LEGISLATION

H.R. 7939 provides that the Commission shall be subject to the Right to Financial Privacy Act of 1978 except in specified cases where the Committee feels it is important to afford the Commission prompt access to financial records in order to exercise its responsibilities under the federal securities laws. In such cases, and subject to prior *ex parte* court approval, the Commission would be entitled to subpoena financial records of a customer from a financial institution without prior notice to the customer. After obtaining such records, the Commission would be required to afford the customer in question notice that access to his records had been obtained by the Commission. The customer would be entitled to bring suit against the Commission for appropriate civil penalties and injunctive relief if the Commission's access was not for purposes authorized by the federal securities laws. In addition, the Bill contains provisions governing the transfer of financial records by the Commission to other governmental authorities, and requiring the Commission to report annually the occasions on which it obtains access to financial records.

NEED FOR THE LEGISLATION

The Commission's ability to detect and take action against fraud, inadequate disclosure of information, manipulation of securities prices, and the other improper practices which are prohibited by the federal securities laws is essential to maintain the public's trust and confidence in the fairness of the marketplace and thus to insuring the integrity of the capital formation process. The discharge of this mandate requires the Commission to have prompt access to the financial records of the various participants in the securities markets, including brokers and dealers, investment companies, clearing houses, transfer agents, financial institutions and others.

Bank records, in particular, are an essential source of information for understanding the financial transactions which the Commission must investigate to discharge its responsibilities.[1] Such transactions often continue for long periods of time, and encompass such complex activities as tender offers, major corporate mergers or acquisitions of assets, and novel securities trading strategies. For example, in cases where the Commission is alerted to the possible misuse of inside information in connection with securities trading, a review of the trading records frequently indicates that the persons involved have attempted to conceal illegal activities through one or more banking institutions. Only a review of these bank records will indicate whether illegal transactions have taken place, and, if so, who are the ultimate beneficiaries of this activity. Similarly, persons engaged in manipulative trading activities often effect large numbers of transactions in the name of corporations and other individuals in order to make the price movement of a security appear to be the result of normal supply and demand. These nominees may be widely scattered throughout the country, and their accounts located at a number of different banks or brokerage firms. The Commission's investigation must establish who caused the transactions to take place, how they did so, and who profited from the transactions. It is thus essential to obtain the financial records in order to establish who ultimately received the illegal profits.

The Commission's examination of bank records would be substantially impeded by the blanket application of the Right to Financial Privacy Act of 1978. If that Act were fully applicable to the Commission, it would, at the minimum, obligate the Commission to defer access to financial records for ten days to two weeks for each subpoena issued. In the frequent case where the subject of an investigation wishes to impede the investigation by filing a court challenge to the Commission's access, the Act would result in further delay and commitment of substantial Commission resources, and would add additional and unnecessary strain to the limited resources of the federal judiciary.

The Commission's need to examine bank records appears to be unique among non-bank federal regulatory agencies, none of which, except the Commission, have a similar need for access to such records to discharge their responsibilities. In this connection, the Committee

[1] In this connection, the Commission's responsibilities extend to the activities of banks and their employees, especially, for example, where banks effect securities transactions, acting essentially as brokers for their customers.

notes that banking agencies, which, like the Commission, have a mandate to protect the integrity and the strength of the nation's financial markets, are accorded special treatment with respect to their access to financial records under the Right to Financial Privacy Act. For example, an exemption for agencies acting in their "supervisory" capacities is provided in Section 1113 of that Act. The Commission, which, as discussed above, has a similar mandate, issues a great number of subpoenas which would be subject to the access restrictions of the Right to Financial Privacy Act if its current exemption from that Act were allowed to expire without appropriate Congressional action.

Thus, the Commission's continuing need for access to bank records, coupled with the pre-compliance notice provisions of the Right to Financial Privacy Act, could result in significant diversion of the Commission's resources from its investigation of securities law violations and into defending challenges to its authority to subpoena bank records. In this connection, the Commission has had an excellent record with respect to the use of its subpoena authority. This Committee is confident that the Commission will continue to operate in a responsible manner in exercising its authority to subpoena evidence, including financial records.[2] But, we are also concerned that if the Commission becomes subject to the Right to Financial Privacy Act, it would, in light of the Commission's continuing and substantial need for access to such financial records, be forced to devote substantial resources to defending suits which experience by the Commission has shown, in many cases, would be filed solely to delay its inquiry, and which might impede the swift remedial action often required to protect the investing public. H.R. 7939, while protecting the legitimate privacy rights of bank customers, avoids undue interference with the law-enforcement efforts of the Commission, and ensures that the assertion of privacy rights does not serve as a sword for delay and obstruction.

Finally, the Right to Financial Privacy Act may create a competitive imbalance between banks and the securities industry. The Committee shared the concern of both the securities industry and the Commission that persons wishing to mask their securities transactions—for whatever reason—would be more likely to execute the transactions through a bank rather than a brokerage firm. This legislation should largely eliminate that competitive differential. However, the Committee expects that the Commission and the securities industry will monitor the effect of this bill, and report to the Committee with respect to any perceived significant competitive imbalance.

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[2] While the Commission's staff may make preliminary inquiries concerning possible violations of the federal securities laws, the staff has no authority to issue compulsory process without Commission approval. When it appears that the issuance of process may be necessary to develop the facts concerning a matter under inquiry, the staff brings the matter to the Commission's attention. If the Commission, by majority vote of its five congressionally-approved members, concurs with the staff's assessment, a formal order of investigation issues. This order sets forth, among other things, the names of the specific staff members authorized to issue subpoenas in conjunction with the investigation and the statutory authority pursuant to which the Commission has adopted the order. Subpoenas are enforceable only to the extent that they seek information which is reasonably relevant to matters within the scope of the formal order of investigation. Should the staff uncover information indicating the advisability of pursuing possible violations not embodied within the scope of the formal order, it must return to the Commission and seek an amendment to the order.

Section-by-Section Analysis

Section 1.—Section 1 of the bill amends Section 9(a) of the Securities Investor Protection Act (SIPA) to increase the present insurance on customers' cash ($40,000) and securities ($100,000 including cash) maintained with broker/dealers to $100,000 and $500,000, respectively.

Section 2.—Section 2 specifies that the Right to Financial Privacy Act of 1978 shall apply to the Commission except as otherwise provided in the Securities Exchange Act of 1934.

Section 3.—Section 3 amends the Securities Exchange Act of 1934. The amendment, which would add Section 21(h) to that Act, sets forth the conditions under which the Commission may obtain access to financial records of a customer without providing the pre-access notice and opportunity to challenge otherwise required under the Right to Financial Privacy Act of 1978.

Section 21(h)(1) reiterates that the Right to Financial Privacy Act of 1978 shall apply to the Commission unless otherwise provided in Section 21(h).

Section 21(h)(2) sets forth the circumstances under which the Commission may obtain an *ex parte* court order delaying the advance notice to the customer which would otherwise be required by the Right to Financial Privacy Act. Initially, the section requires a showing before a United States district judge, or magistrate, that the Commission seeks financial records "pursuant to a subpoena issued in conformity" with applicable requirements of the federal securities laws.[3] Thus, the section incorporates and preserves existing legal requirements as prerequisites to the Commission's use of its subpoena authority. The Committee recognizes that "an appropriate court" would be any of those specified in Section 21(c) of the Exchange Act.

The legal requirements for a Commission investigation are quite explicit. Section 21(a) of the Securities Exchange Act, 15 U.S.C. 78u(a), for example, empowers the Commission to "make such investigations as it deems necessary to determine whether any person has violated, is violating, or is about to violate" that Act or the rules or regulations thereunder. Through this provision, Congress endowed the Commission with "broad powers" to conduct investigations in support of its statutory mandate to protect the public interest through prompt and effective enforcement of the federal securities laws.[4] As part of this legislative scheme, the Commission's subpoena powers were conferred "[f]or the purpose of any such investigation" to permit the Commission to "subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda or other records which the Commission deems relevant or material to the inquiry." Section 21(b) of the Securities Exchange Act, 15 U.S.C. 78u(b).

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[3] Section 19(b) of the Securities Act of 1933, Section 21(b) of the Securities Exchange Act of 1934, Section 18(c) of the Public Utility Holding Act of 1935, Section 42(b) of the Investment Company Act of 1940, or Section 209(b) of the Investment Advisers Act of 1940.

[4] *Securities and Exchange Commission* v. *Arthur Young & Company*, 584 F. 2d 1018, 1024 (D.C. Cir. 1978), *cert. denied*, 439 U.S. 1071 (1979). As the courts have recognized, "[t]he very backbone of an administrative agency's effectiveness in carrying out the congressionally mandated duties * * * is the rapid exercise of the power to investigate. *Federal Maritime Commission* v. *Port of Seattle*, 521 F. 2d 431, 433 (9th Cir. 1975).

This is not to say, however, that the Commission's subpoena powers to obtain customer records from a financial institution without prior notice are unlimited, or that the district courts or magistrates should act as mere "rubber stamps" in determining whether notice should be delayed. Thus, as in cases where the Commission seeks enforcement of its subpoenas, the Commission's investigation must have a legitimate purpose.[5]

On the other hand, while a district court's or magistrate's inquiry into whether customer notice may be delayed is "neither minor nor ministerial," [6] the industry is a limited one.[7]

Circumstances Under Which the Commission May Obtain Ex Parte Approval of Its Subpoenas

In addition to the requirement that the Commission show that its subpoena is issued in conformity with otherwise applicable requirements of the federal securities laws, the Commission must meet one of the criteria set forth in paragraphs (A) through (D) of section 21 (h)(2). These criteria relate to the Commission's particular need to obtain prompt access to financial records without the pre-access litigation which could result under the Right to Financial Privacy Act.

Paragraph (A).—Paragraph (A) would allow the Commission access to financial records without prior notice to the customer if the Commission has reason to believe that delay in obtaining access to such records, or the required notice, will result in specified consequences adverse to the policies underlying the securities laws. Subparagraphs (i) and (ii), which would require a showing that there is reason to believe that delay in obtaining access to financial records, or the notice required under the Right to Financial Privacy Act, will result in flight from prosecution or in destruction of or tampering with evidence, are similar to criteria already contained in the delayed notice provisions of Section 1109 of the Right to Financial Privacy Act. Similarly, subparagraphs (iii) and (iv) recognize the importance of allowing prompt access upon a showing by the Commission that there is reason to believe that the delay or the notice required by the Right to Financial Privacy Act will result in the transfer of assets outside the territorial limits of the United States or improper conversion of investor assets. Subparagraph (v) would allow the Commission to obtain *ex parte* approval of its subpoenas for financial records if it has reason to believe that its ability to identify or trace the source or disposition of funds involved in securities transactions will be impeded by delay in obtaining access to financial records, or by the notice required under the Right to Financial Privacy Act. This provision is necessary because

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[5] As described by the Court of Appeals for the District of Columbia Circuit in *Securities and Exchange Commission* v. *Dresser Industries, Inc.*, No. 78–1705 (July 16, 1980), *en banc*, there is such a purpose if "the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant." Slip op. 23 n. 28. *Securities and Exchange Commission* v. *Arthur Young & Company, supra*; and *United States* v. *Morton Salt Co.*, 338 U.S. 632 at 652.

[6] *Cf. Oklahoma Press Publishing Co.* v. *Walling*, 327 U.S. 186, 217 n. 57 (1946).

[7] As stated in *Securities and Exchange Commission* v. *Blackfoot Bituminous, Inc.*, CCH Fed. Sec. L. Rep. Current ¶ 97,532 (10th Cir. June 9, 1980), the Commission is not required to establish a likelihood that securities law violations have been or may be committed before obtaining enforcement of its subpoenas. Nor is a court allowed "to consider the motives of an agency's informants to determine whether enforcement of the subpoena would constitute an abuse of the judicial process." *Securities and Exchange Commission* v. *Wheeling Pittsburg Steel Corp.* (3rd Cir. Aug. 27, 1980), slip op. at [13–15].

time is of the essence in certain investigations undertaken by the Commission.[8]

Paragraph (B).—Paragraph (B) would allow the Commission to obtain *ex parte* access to financial records without the prior notice otherwise required by the Right to Financial Privacy Act if there is reason to believe that "such financial records are necessary to identify or trace the record or beneficial ownership interest in a security." In its investigations, the Commission is frequently required to examine complex and voluminous records to determine the true ownership interests of securities involved in transactions under investigation. This is true even after the security has been sold and the only evidence of ownership is represented by the proceeds of sale. In this regard, it is important to note that those who have committed violations of the securities laws sometime seek to hide their illegal activities by disguising their true identity. Paragraph (B) would aid the Commission in preventing this type of concealment.

Paragraph (C).—Subparagraph (C)(i) would allow access to financial records without prior notice to the customer upon a showing that there is reason to believe that "the acts, practices, or courses of conduct under investigation involve * * * the dissemination of materially false or misleading information concerning any security, issue, or market, or the failure to make disclosures required under the securities laws, which remain uncorrected." This recognizes the need for immediate action by the Commission where materially false or misleading information is present in the marketplace. Often in such cases, even the slightest delay in obtaining access to financial records can have an adverse impact upon the investing public.

Similarly, subparagraph (C)(ii) would allow the Commission to obtain access to financial records without prior notice if there is reason to believe that such acts, practices, of course of conduct under investigation involve a substantially uncompensated financial loss to "investors or other persons protected under the securities laws." Under subparagraph (C)(ii) the Commission is not required, when appearing before the court or magistrate pursuant to paragraph 21(h)(2), to identify a particular individual who may have been adversely affected by the activities under investigation. It must, however, show that it has reason to believe that those who may have suffered the uncompensated financial loss fall within the categories of persons whom Congress wished to protect under the securities laws. In this connection, the term "investors" includes those who already own securities, and those considering whether to buy securities, as well as those who actually buy or

[8] Upon discovering evidence of a manipulation of the market for a security or a fraudulent scheme, which may be in violation of Section 17(a) of the Securities Act or Sections 9 or 10 of the Securities Exchange Act, the Commission must promptly determine those persons responsible for the activities in question. Because nominee accounts are frequently used for fraudulent and manipulative activities, it is necessary that the Commission trace the source of the funds involved in the transactions to assure identification of those responsible. Also, Sections 13(d)(1) and 14(d)(1) of the Securities Exchange Act, taken together, require persons wishing to make tender offers for the securities of certain publicly held companies to disclose relevant information to the Commission, including "the source and amount of the funds or other consideration used or to be used in making the purchases." Subparagraph (v) recognizes the need for prompt Commission action in cases as this.

In other situations, such as sales of unregistered securities, manipulative activities, and undisclosed enrichment by a corporation's managers, the Commission has sometimes found that proceeds pass through a series of bank accounts, which are often maintained in fictitious names or in the name of a nominee of the beneficial owner of the account. Under subparagraph (v), if the Commission suspects that such acts or practices have occurred, it may obtain *ex parte* approval of its subpoenas for bank records, to insure that those seeking to evade its subpoena power may not succeed in frustrating its investigation.

sell securities. Further, the phrase "other persons protected under the securities laws" includes a broad category of individuals and entities whose interests are touched by transactions and courses of business occurring in the securities and capital markets. *See United States* v. *Naftalin*, 441 U.S. 768 (1979).[9]

Paragraph (D).—Paragraph (D) would permit the Commission to act promptly in cases where there is reason to believe that the activities under investigation involve "significant financial speculation in securities or endanger the stability of any investment or financial intermediary." This provision was included by the Committee for consideration similar to those which prompted the Congress to provide an exemption from the requirements of the Government in the Sunshine Act (5 U.S.C. 552b) recognizing the special needs of an agency "which regulates * * * securities * * * or financial institutions" to consider in private information which would "be likely to (i) lead to significant financial speculation in * * * securities * * * or (ii) significantly endanger the stability of any financial institution."

In exercising its responsibilities under the securities laws with respect to rapidly moving financial transactions and the financial institutions which may be involved in such transactions, the Commisison sometimes determines that the public interest requires prompt action—for example, to temporarily suspend trading in a security based upon unexplained market activity. Given the importance of prompt action to the proper functioning of the securities markets and the vulnerability of these markets to manipulation, delay in conducting an investigation could impede the Commission in taking the remedial action necessary to protect the investing public and the securities markets.[10] However, the Committee intends that paragraph (D) be used judiciously and will take special notice of the occasions on which the Commission relies thereon to obtain access to financial records of the customer.

Section 21(h)(3) states that an application for delay in notice to the customer made pursuant to section (2) "shall be made with reasonable specificity." This requirement should not be construed to compel the Commission to make out its case in chief at the investigatory stage. In this regard, the "reason to believe" standard in Section 21(h)(2) should be construed to require the Commission only to establish a factual basis from which it would be responsible to infer that one or more of the circumstances set forth in paragraphs (A) through (D) exist.

Procedures

Sections 21(h)(4) and (5) set forth the procedures to be followed by the court or magistrate upon an application by the Commission for relief from the strictures of the Right to Financial Privacy Act. Para-

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[9] In *United States* v. *Naftalin*, the Supreme Court held that Section 17(a) is "intended to cover any fraudulent scheme in an offer or sale of securities, whether in the course of an initial distribution or in the course of ordinary market trading," provided only that the activities in question occur have some connection with the offer or sale of securities, such as a misleading press release calculated to influence the trading market. 441 U.S., 768, 777–8 (1979).

[10] Thus, the Commission would be permitted prompt access to financial records where the possible violations of the securities laws under investigation involve speculation in securities. Subparagraph (D) would also apply in cases where activities under investigation endanger the stability of investment or financial intermediaries such as banks, broker-dealers, and investment companies.

graphs (A) and (B) of Section 21(h)(4) state that upon a showing which is satisfactory under Section 21(h)(2), the presiding judge or magistrate must enter an *ex parte* order granting the request to delay notice to the customer for a period not to exceed 90 days, and an order prohibiting the financial institution involved from disclosing that records have been obtained or that a request for records has been made; extensions of this period of delay of notice of up to 90 days each may be granted by the court upon application by the Commission. Paragraph (C) states that upon expiration of the period of delay of notification ordered by the court under paragraphs (A) or (B), a customer must be notified of the Commission's access insofar as it applies to him; thus, material contained in the subpoena which pertains to a different customer need not be furnished to such customer. In addition to a copy of the subpoena, or the relevant portion thereof, the customer must be provided with the notice set forth in (C), which must "describe with reasonable specificity the nature of the investigation for which the Commission sought the financial records in question." The Committee intends that the requirements of reasonable specificity would be met by reference to the statutory provisions pursuant to which the investigation was commenced as well as by reference to the statutory provisions violation of which the Commission is investigating. Section 21(h)(5) states that upon application by the Commission, proceedings before the court or magistrate pursuant to Sections (2) and (4) "shall be held *in camera* and the records thereof sealed until expiration of the period of delay" ordered by the court. The presiding judge or magistrate may, however, establish a different date for the unsealing of the records of proceedings held pursuant to Sections (2) and (4), having due regard for the impact on the Commission's investigation and the privacy rights of the customer in question.

Annual Report to Congress

Section 21(h)(6) requires the Commission to make an annual report to Congress "of the occasions on which the Commission used each separate subparagraph or clause of section (2) of the subsection or the provisions of the Right to Financial Privacy Act of 1978 to obtain access to financial records of the customer." Such tabulation shall be included in the Commission's annual report to Congress.

Remedies and Sanctions

Section 21(h)(7) sets forth the remedies and sanctions available to a customer for violations by the Commission of Section 21(h). Under paragraph (A) the customer, following the expiration of the period of delay of notification ordered by the court, may reopen the proceeding in the district court which issued the order. If the presiding judge or magistrate finds that the movant is the customer to whom the records obtained by the Commission pertain, and that the Commission has obtained financial records or information contained therein in violation of Section 21(h), it may order that the customer be granted certain specified relief against the Commission.[11] Such relief shall be limited

[11] The district court which issues the order shall be the appropriate tribunal, not the court of the district where the bank is located. Compare the venue provision of the National Bank Act, Rev. Stat. § 5198 (1878), 12 U.S.C. 94.

to the sum of: (1) $100 without regard to the volume of records involved; (2) any "out-of-pocket damages" sustained by the customer as a direct result of disclosure; and (3) in the case of any violation which is found to have been willful, intentional and without good faith, punitive damages together with the costs of the action and reasonable attorneys fees. The term "out-of-pocket damages" shall be construed to include only such injury to the customer which has been established to have a direct link with the disclosure in question and shall not include such speculative matters as injury to reputation and to prospective business opportunities. By this provision, this legislation supersedes, but only with respect to actions under Section 21(h), the provisions of Section 27 of the Securities Exchange Act of 1934 prohibiting the awarding of costs for or against the Commission. The Committee believes that in cases where a claim under section 21(h) is found by the court to be frivolous or brought for the purposes of obstruction or delay, costs, and in aggravated cases attorneys fees, may be awarded in favor of the Commission by the court in its discretion.

In concluding whether a customer is entitled to relief under Section (7), the court should not be bound by its prior findings in the course of the *ex parte* proceedings initiated by the Commission pursuant to Section 21(h)(2). The court may, of course, give due regard to such findings as they bear on the claims raised by the customer.

In addition to the monetary damages authorized by paragraphs (A) and (B), Section 21(h)(7) authorizes the court, in its discretion, to provide injunctive relief to require the Commission to comply with Section 21(h) with respect to any subpoena which the Commission issues in the future for financial records of such customer for purposes of the same investigation. In addition, paragraph (C) provides that if the court finds that the circumstances surrounding any violation of Section 21(h) demonstrate that an officer or employee of the Commission acted in a willful and intentional manner and without good faith with respect to the violation the Office of Personnel Management shall initiate proceedings to determine whether disciplinary action is warranted against the agent or employee primarily responsible for the violation. No such proceeding will be initiated unless the court finds that the officer or employee in question acted "without good faith with respect to the violation."

Section 21(h)(8) states that the relief described in Section 21(h)(7), with respect to the Commission, and Section 21(h)(10) with respect to other government authorities to which the Commission has transferred information, shall be the only remedies or sanctions available to a customer for violation of Section 21(h). This Committee intends that such remedies shall not be supplemented by judicially imposed suppression of any financial records or information obtained either by subpoena issued by the Commission, or by a Commission request or demand for such records otherwise than pursuant to a subpoena.[12]

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[12] The differences between the wording of sec. 21(h)(8) and sec. 1117(d) of the Right of Financial Privacy Act are primarily due to the structural differences between the Right of Financial Privacy Act and sec. 21(h). Thus, the committee recognizes that the judicial remedies permitted by both sec. 21(h)(8) and sec. 1117(d) are exclusive. Cf. *United States* v. *Brown*, 605 F. 2d 389 (8 Cir. 1979).

Transfer to Other Governmental Authorities

Section 21(h)(9) governs the transfer to another governmental authority of financial records obtained by the Commission. Such transfer would generally be permissible only if the Commission proceeds as a transferring agency in accordance with Section 1112 of the Right to Financial Privacy Act, except that the customer notice required under Sections 1112(b) or (c) of that Act may be delayed upon a showing by the Commission that one or more of the criteria set forth in paragraphs (A) through (D) of Section 21(h)(2) apply. Section 21(h)(2) also makes clear that notice upon transfer may also be delayed pursuant to the delay of notice provisions set forth in the Right to Financial Privacy Act itself. The procedures governing an application for such delay-of-notice upon transfer of financial records by the Commission to another governmental authority are those set forth in Sections 21(h)(4) and (5), governing the Commission's initial applications for delay-of-notice with respect to its own access to financial records.

Despite the restrictions on transfer of financial information contained in Paragraph (A) of Section 21(h)(7) the Committee believes that it is important in certain instances that the Commission be able to transfer information without the need to make the *ex parte* showing required, via Section 21(h)(2), by Paragraph (A). Paragraph (B) of Section 21(h)(7), therefore, permits the Commission to transfer, without the need to make such a showing, financial records, or the information contained therein, to a State securities agency or to the Department of Justice. The records or information which is the subject of the transfer may, however, be used only by a State securities agency or by the Department of Justice in a proceeding which relates to or arises out of the Acts or course of conduct investigated by the Commission. If a State securities agency or the Department of Justice seek to use the records or information for another purpose it may do so, subject to the Right to Financial Privacy Act, only if it notifies the customer within 30 days of the determination to use the material. Such notice may, however, be omitted or delayed in circumstances in which notice may be omitted or delayed upon transfer of records by governmental authority under the Right to Financial Privacy Act of 1978.

Other Provisions

Section 21(h)(10) makes clear that government authorities violating subsection (9) shall be subject to the procedures and penalties applicable to the Commission under paragraph (7)(A).

Section 21(h)(11) states that the procedure for obtaining and transferring financial records set forth in proposed Section 21(h) are not the sole procedures available to the Commission, and that the Commission may, in the alternative, employ the procedures set forth in the Right to Financial Privacy Act.

Section 21(h)(12), which parallels the Right to Financial Privacy Act, specifies that Section 21(h) shall not be construed to enlarge or restrict any right of financial institutions (as opposed to its customers) to challenge requests for records made by the Commission, or to entitle a customer to assert any rights of the financial institution.

Section 21(h)(15) provides that, unless the context otherwise requires all terms used in Section 21(h) which are defined in the Right to Financial Privacy Act shall have the same meaning as in the latter Act.

Section 4.—Section 4 clarifies the reference to the term "securities laws" in existing Section 21(g) of the Securities Exchange Act of 1934 by making this definition also applicable to proposed Section 21(h).

Section 5.—Section 5 contains the effective date provisions of this Bill.

Committee Consideration

The Subcommittee on Consumer Protection and Finance held hearings on H.R. 6831 on June 3, 1980. The Subcommittee heard testimony from the Securities Investor Protection Corporation, Securities and Exchange Commission, National Association of Securities Dealers, Inc., and the Securities Industry Association.

The Subcommittee met in mark-up session on July 31, 1980, and on August 1, 1980, unanimously reported H.R. 6831, a quorum being present.

On August 18, 1980, H.R. 7939 was introduced to encompass the provisions of H.R. 6831 and H.R. 7836, Right to Financial Privacy Act provisions. The full Committee considered and reported H.R. 7939 on September 10, 1980, by voice vote, a quorum being present.

Oversight Findings and Recommendations of the Committee on Government Operations

No findings or recommendations on oversight activity pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives have been submitted by the Committee on Government Operations for inclusion in this report.

Inflationary Impact Statement

Pursuant to rule XI, clause 2(l)(4) of the Rules of the House of Representatives, the Committee makes the following statement regarding the inflationary impact of the bill:

The Committee is unaware that any inflationary impact on the economy will result from the passage of H.R. 7939.

U.S. Congress,
Congressional Budget Office,
Washington, D.C., September 15, 1980.

Hon. Harley O. Staggers,
Chairman, Committee on Interstate and Foreign Commerce, U.S. House of Representatives, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 7939, a bill to amend the Securities Investor Protection Act to increase the amount of protection available under such act to customers of brokers and dealers, and to provide for the applicability of the Right to Financial Privacy Act of 1978 to the Securities and Exchange Com-

mission, as ordered reported by the House Committee on Interstate and Foreign Commerce, September 10, 1980.

H.R. 7939 would increase coverage for cash and securities maintained with securities dealers by customers from $40,000 and $100,000 to $100,000 and $500,000, respectively. This insurance is provided by the Securities Investor Protection Corporation (SIPC), a private, nonprofit organization. Initially begun with a $1 billion line of credit with the U.S. Treasury, the SIPC currently has a $200 million trust fund generated from industry assessments. The cost of increasing the insurance levels, if any, would be passed on in higher assessments charged to the membership. The line of credit with the Treasury has not been used to date, and, since it is unlikely that it would be utilized in the future, it is expected that this provision would have no cost impact on the Federal budget.

In addition, the bill would amend the Securities Exchange Act of 1934, incorporating several provisions of the Right to Financial Privacy Act of 1978. The changes would probably result in a more efficient use of resources by the Securities and Exchange Commission, although any savings would not have a significant impact on the Federal budget.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

AGENCY COMMENTS

SECURITIES AND EXCHANGE COMMISSION,
Washington, D.C., August 22, 1980.

Hon. HARLEY O. STAGGERS,
Chairman, House Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR CHAIRMAN STAGGERS: This is in response to your request for comments on H.R. 7836 (also contained in H.R. 7939). As you know, when Congress enacted the Right to Financial Privacy Act in 1978, it was aware of the problems which the new legislation could pose for the Commission and exempted this agency from its provisions for a two year period, expiring in November 1980. In March of this year, the Commission submitted to Chairman Scheuer of the Subcommittee on Consumer Protection and Finance a letter, a copy of which is attached, describing the impact of the Right to Financial Privacy Act on the Commission and setting forth a legislative proposal which would provide permanent relief for the Commission. During the intervening months, many, many hours of discussion have taken place between the Commission and various Members and staff in the Congress. H.R. 7836 represents the product of those discussions and is supported by the Commission.

The Commission recognizes the concern underlying the Right to Financial Privacy Act of protecting the privacy interests of bank customers. However, our ability to detect and take action against fraud, inadequate disclosure of information, manipulation of securities prices, and the other improper practices which Congress has prohibited in the Federal securities laws is vital to the public's trust and

confidence in the fairness of the marketplace, and, thus, to the integrity of the capital formation process which underlies our economy. Bank records are an absolutely essential source of information for understanding the financial transactions which lie at the heart of the Commission's responsibilities. Such transactions often extend over long periods of time and encompass such complex activities as tender offers, major corporate mergers or acquisitions of assets, and novel securities strategies.

For example, in cases where the Commission is altered to the possible misuse of inside information in connection with securities trading, a review of the trading records frequently indicates that one or more banks are utilized in connection with the transaction, and only a review of these bank records will indicate whether illegal transactions have taken place, and, if so, who are the ultimate beneficiaries of this type of fraudulent conduct. Similarly, persons engaged in manipulative trading activities often effect transactions in the names of corporations and individuals to make the price movement of the security appear to be the result of normal supply and demand. These nominees may be widely scattered throughout the country, and their accounts located at a number of different banks or brokerage firms. It is essential for our investigators to obtain the financial records that establish who caused the transaction to take place, how they did so, and who ultimately received the illegal profits. The Commission relies equally heavily on bank records to investigate other types of possible violations of the securities laws as well.

The precompliance notice and challenge provisions of the Right to Financial Privacy Act could result in a significant diversion of the Commission's limited resources away from investigating securities violations and into defending challenges to its authority to subpoena bank records. The Right to Financial Privacy Act would, at a minimum, obligate the Commission to defer access to financial records for a minimum of two weeks with respect to each subpoena. In a frequent case where the subject of an investigation wishes to impede the investigation to the extent possible, the Act would result in further delay in obtaining the records, and the commitment of substantial staff resources would strain the already limited resources of the Federal judiciary, particularly in light of the frequency of the Commission's need for access to bank records.[13]

It is also crucial to note that the Commission's investigations frequently focus on cases where there is ongoing wrongful activity. In these cases, delay can seriously impede the Commission's ability to prevent future harm to the investing public. Moreover, timeliness is an essential ingredient of the equity which the Commission must demonstrate to show that it is entitled to injunctive relief. Delay in obtaining access to relevant bank records could thus jeopardize the success of Commission injunctive action.

In sum, if the Commission were to become subject to the Right to Financial Privacy Act, it would be forced to devote substantial re-

[13] At the end of 1979, the Commission was conducting approximately 1,650 investigations, with a staff of 700, including secretarial and other support personnel, and had undertaken 296 new investigations during that year alone. In this regard, the Commission received approximately 15,000 complaints from the public during 1979 with respect to possible securities violations. In addition, the Commission receives a large number of indications of possible securities violations from its market surveillance and inspection programs, from the filings with the Commission which are required under the securities laws, and through referrals from other agencies.

sources to defending suits which, in many cases, would be filed solely in order to delay the Commission's inquiry, and impede the swift, remedial action often required to protect the investing public. Thus, the application of the Act to the Commission would serve not so much as a shield to protect honest and innocent persons from unwarranted invasions of privacy, but rather as a tool for delay and obstruction in the hands of a small minority of well-financed and well-organized individuals who prey on the investing public.

In this context, H.R. 7836 represents a practical and useful alternative to the application of all provisions of the Right to Financial Privacy Act to the Commission. H.R. 7836 provides that, in those cases where it is particularly important to afford the Commission prompt access to financial records in order to exercise its responsibilities under the Federal securities laws, the Commission would be entitled to subpoena financial records of a customer from a financial institution without prior notice to the customer.

Section 21(h)(2) would set forth the circumstances under which the Commission may obtain an *ex parte* court order delaying the advance notice to the customer which would otherwise be required by the Right to Financial Privacy Act. Initially, the Section requires a showing that the Commission seeks financial records "pursuant to a subpoena issued in conformity" with applicable requirements of the Federal securities laws. Thus, the Section incorporates and preserves existing legal requirements for the Commission's use of its subpoena authority. In addition, the Commission must satisfy an additional requirement—that it make a showing which meets one of the criteria set forth in the bill pertaining to the need for prompt access to financial records. These criteria are set forth in paragraphs A–D of Section 21(h)(2).

After obtaining such records, the Commission would be required to afford the customer in question notice that access to his records had been obtained by the Commission. The customer would be entitled to bring suit against the Commission for appropriate civil penalties and injunctive relief, if the Commission's access was not for purposes authorized by the Federal securities laws. In addition, the bill contains provisions governing the transfer of financial records by the Commission to other governmental authorities and requiring the Commission to report to Congress concerning the occasions on which it obtains access to financial records.

Throughout its 45-year history, the Commission has been sensitive to the privacy rights of individuals who come within the scope of Commission investigations. At the same time however, the Commission believes that, in the special context of its work, the application of the Right to Financial Privacy Act would seriously tip the balance against prompt and effective enforcement of the Federal securities laws and would unduly benefit the small group of well-financed and habitual violators of the Federal securities laws who would have at their disposal a new tool to delay Commission investigations. Accordingly, we urge Congress to avoid this danger by adopting H.R. 7836, as proposed, which provides substantial privacy protections to bank customers by requiring that they be notified following Commission access to their financial records and by giving them a right to obtain relief for any improper access by the Commission.

The views expressed above do not necessarily represent the views of the President. These materials are being simultaneously submitted to the Office of Management and Budget. We will inform you of any advice received from that Office concerning the relationship of these materials to the program of the Administration.

I appreciate this opportunity to express our views with respect to H.R. 7836, and would be happy to provide any additional assistance you might request.

With best wishes.

Sincerely,

HAROLD M. WILLIAMS,
Chairman.

SECURITIES INVESTOR PROTECTION CORPORATION,
FARRAGUT BUILDING,
Washington, D.C., April 1, 1980.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. STAGGERS: On behalf of the Board of Directors of the Securities Investor Protection Corporation, I am pleased to support H.R. 6831, a bill to amend the Securities Investor Protection Act to increase the amount of protection available to customers of broker/dealers. We appreciate the response of you and Messrs. Scheuer, Broyhill and Rinaldo in introducing this legislation pursuant to our request of February 13, 1980.

The proposed increase in the limit of funds which may be advanced from the SIPC Fund to pay any customer account from the present $100,000 (no more than $40,000 of which may be a claim for cash as opposed to a claim for securities) to $500,000 with a limit of $100,000 for cash claims will be an important step forward in the protection of public customers. It will undoubtedly increase investor confidence in our nation's securities markets and will have other benefits as well. For example, it should promote the immobilization of stock certificates, which was one of the objectives of the Securities Act Amendments of 1975.

The amendment will not result in any cost to taxpayers since, as you know, the SIPC program has been funded entirely from assessments paid by the securities industry. At the present time, the SIPC Fund totals over $195 million, and based upon our experience and other factors, we have every reason to anticipate that the additional costs of the proposed increases will not have a significant impact on the Fund.

We believe that prompt enactment of H.R. 6831 is in the public interest, and we stand ready to be of whatever assistance we can in reaching that objective. We appreciate the interests of you and your colleagues.

Sincerely yours,

HUGH F. OWENS.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is

enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 9 OF THE SECURITIES INVESTOR PROTECTION ACT

SEC. 9. SIPC ADVANCES.

(a) ADVANCES FOR CUSTOMERS' CLAIMS.—In order to provide for prompt payment and satisfaction of net equity claims of customers of the debtor, SIPC shall advance to the trustee such moneys, not to exceed [$100,000] *$500,000* for each customer, as may be required to pay or otherwise satisfy claims for the amount by which the net equity of each customer exceeds his ratable share of customer property, except that—

(1) if all or any portion of the net equity claim of a customer in excess of his ratable share of customer property is a claim for cash, as distinct from a claim for securities, the amount advanced to satisfy such claim for cash shall not exceed [$40,000] *$100,000* for each such customer;

* * * * * * *

SECTION 1122 OF THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978

[SEC. 1122. The Securities and Exchange Commission shall not be subject to the provisions of this title for a period of two years from the date of enactment of the title.]

SECURITIES AND EXCHANGE COMMISSION

SEC. 1122. Except as provided in the Securities Exchange Act of 1934, this Act shall apply with respect to the Securities and Exchange Commission.

SECTION 21 OF THE SECURITIES EXCHANGE ACT OF 1934

INVESTIGATIONS; INJUNCTIONS AND PROSECUTION OF OFFENSES

SEC. 21. (a) * * *

* * * * * * *

(g) Notwithstanding the provisions of section 1407(a) of title 28, United States Code, or any other provision of law, no action for equitable relief instituted by the Commission pursuant to the securities laws shall be consolidated or coordinated with other actions not brought by the Commission, even though such other actions may involve common questions of fact, unless such consolidation is consented to by the Commission. The term "securities laws" as used herein *and in subsection (h)* includes the Securities Act of 1933 (15 U.S.C. 77 et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a et seq.), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.), the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.), the Investment

Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.), and the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.).

(h)(1) The Right to Financial Privacy Act of 1978 shall apply with respect to the Commission, except as otherwise provided in this subsection.

(2) Notwithstanding section 1105 or 1107 of the Right to Financial Privacy Act of 1978, the Commission may have access to and obtain copies of, or the information contained in financial records of a customer from a financial institution without prior notice to the customer upon an ex parte showing to an appropriate United States district court that the Commission seeks such financial records pursuant to a subpena issued in conformity with the requirements of section 19(b) of the Securities Act of 1933, section 21(b) of the Securities Exchange Act of 1934, section 18(c) of the Public Utility Holding Company Act of 1935, section 42(b) of the Investment Company Act of 1940, or section 209(b) of the Investment Advisers Act of 1940, and that the Commission has reason to believe that—

(A) delay in obtaining access to such financial records, or the required notice, will result in—

(i) flight from prosecution;

(ii) destruction of or tampering with evidence;

(iii) transfer of assets or records outside the territorial limits of the United States;

(iv) improper conversion of investor assets; or

(v) impeding the ability of the Commission to identify or trace the source or disposition of funds involved in any securities transaction;

(B) such financial records are necessary to identify or trace the record or beneficial ownership interest in any security;

(C) the acts, practices or course of conduct under investigation involve—

(i) the dissemination of materially false or misleading information concerning any security, issuer, or market, or the failure to make disclosures required under the securities laws, which remain uncorrected; or

(ii) a financial loss to investors or other persons protected under the securities laws which remains substantially uncompensated; or

(D) the acts, practices or course of conduct under investigation—

(i) involve significant financial speculation in securities; or

(ii) endanger the stability of any financial or investment intermediary.

(3) Any application under paragraph (2) for a delay in notice shall be made with reasonable specificity.

(4)(A) Upon a showing described in paragraph (2), the presiding judge or magistrate shall enter an ex parte order granting the requested delay for a period not to exceed ninety days and an order prohibiting the financial institution involved from disclosing that records have been obtained or that a request for records has been made.

(B) Extensions of the period of delay of notice provided in subparagraph (A) of up to ninety days each may be granted by the court upon application, but only in accordance with this subsection or section

1109 (a), (b)(1), or (b)(2) of the Right to Financial Privacy Act of 1978.

(C) Upon expiration of the period of delay of notification ordered under subparagraph (A) or (B), the customer shall be served with or mailed a copy of the subpena insofar as it applies to the customer together with the following notice which shall describe with reasonable specificity the nature of the investigation for which the Commission sought the financial records:

"Records or information concerning your transactions which are held by the financial institution named in the attached subpena were supplied to the Securities and Exchange Commission on (date). Notification was withheld pursuant to a determination by the (title of court so ordering) under section 21(h) of the Securities Exchange Act of 1934 that (state reason). The purpose of the investigation or official proceeding was (state purpose)".

(5) Upon application by the Commission, all proceedings pursuant to paragraphs (2) and (4) shall be held in camera and the records thereof sealed until expiration of the period of delay or such other date as the presiding judge or magistrate may permit.

(6) The Commission shall compile an annual tabulation of the occasions on which the Commission used each separate subparagraph or clause of paragraph (2) of this subsection or the provisions of the Right to Financial Privacy Act of 1978 to obtain access to financial records of a customer and include it in its annual report to the Congress. Section 1121(b) of the Right to Financial Privacy Act of 1978 shall not apply with respect to the Commission.

(7)(A) Following the expiration of the period of delay of notification ordered by the court pursuant to paragraph (4) of this subsection, the customer may, upon motion, reopen the proceeding in the district court which issued the order. If the presiding judge or magistrate finds that the movant is the customer to whom the record obtained by the Commisison pertain, and that the Commission has obtained financial records or information contained therein in violation of this subsection, other than paragraph (1), it may order that the customer be granted civil penalties against the Commission in an amount equal to the sum of—

(i) $100 without regard to the volume of records involved;

(ii) any out-of-pocket damages sustained by the customer as a direct result of the disclosure; and

(iii) if the violation is found to have been willful, intentional, and without good faith, such punitive damages as the court may allow, together with the costs of the action and reasonable attorney's fees as determined by the court.

(B) Upon a finding that the Commission has obtained financial records or information contained therein in violation of this subsection, other than paragraph (1), the court, in its discretion, may also or in the alternative issue injunctive relief to require the Commission to comply with this subsection with respect to any subpena which the Commission issues in the future for financial records of such customer for purposes of the same investigation.

(C) Whenever the court determines that the Commission has failed to comply with this subsection, other than paragraph (1), and the court finds that the circumstances raise questions of whether an

officer or employee of the Commission acted in a willful and intentional manner and without good faith with respect to the violation, the Office of Personnel Management shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the agent or employee who was primarily responsible for the violation. After investigating and considering the evidence submitted, the Office of Personnel Management shall submit its findings and recommendations to the Commission and shall send copies of the findings and recommendations to the officer or employee or his representative. The Commission shall take the corrective action that the Office of Personnel Management recommends.

(8) The relief described in paragraphs (7) and (10) shall be the only remedies or sanctions available to a customer for a violation of this subsection, other than paragraph (1), and nothing herein or in the Right to Financial Privacy Act of 1978 shall be deemed to prohibit the use in any investigation or proceeding of financial records, or the information contained therein, obtained by a subpena issued by the Commission. In the case of an unsuccessful action under paragraph (7), the court shall award the costs of the action and attorney's fees to the Commission if the presiding judge or magistrate finds that the customer's claims were made in bad faith.

(9)(A) The Commission may transfer financial records or the information contained therein to any government authority if the Commission proceeds as a transferring agency in accordance with section 1112 of the Right to Financial Privacy Act of 1978, except that the customer notice required under section 1112 (b) or (c) of such Act may be delayed upon a showing by the Commission, in accordance with the procedure set forth in paragraphs (4) and (5), that one or more of subparagraphs (A) through (D) of paragraph (2) apply.

(B) The Commission may, without notice to the customer pursuant to section 1112 of the Right to Financial Privacy Act of 1978, transfer financial records or the information contained therein to a State securities agency or to the Department of Justice. Financial records or information transferred by the Commission to the Department of Justice or to a State securities agency pursuant to the provisions of this subparagraph may be disclosed or used only in an administrative, civil, or criminal action or investigation by the Department of Justice or the State securities agency which arises out of or relates to the acts, practices, or courses of conduct investigated by the Commission, except that if the Department of Justice or the State securities agency determines that the information should be disclosed or used for any other purpose, it may do so if it notifies the customer, except as otherwise provided in the Right to Financial Privacy Act of 1978, within 30 days of its determination, or complies with the requirements of section 1109 of such Act regarding delay of notice.

(10) Any government authority violating paragraph (9) shall be subject to the procedures and penalties applicable to the Commission under paragraph (7)(A) with respect to a violation by the Commission in obtaining financial records.

(11) Notwithstanding the provisions of this subsection, the Commission may obtain financial records from a financial institution or

transfer such records in accordance with provisions of the Right to Financial Privacy Act of 1978.

(12) Nothing in this subsection shall enlarge or restrict any rights of a financial institution to challenge requests for records made by the Commission under existing law. Nothing in this subsection shall entitle a customer to assert any rights of a financial institution.

(13) Unless the context otherwise requires, all terms defined in the Right to Financial Privacy Act of 1978 which are common to this subsection shall have the same meaning as in such Act.

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